

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

HOMER GUY,

Petitioner,

v.

SUPERINTENDENT SOBINA, et al.,

Respondents.

Civil Action No. 08-358 Erie

**MEMORANDUM ORDER**

This civil action was opened when Petitioner's motion for leave to proceed *in forma pauperis* [1] was received by the Clerk of Court on December 23, 2008. The case was referred to Chief United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Chief Magistrate Judge's Report and Recommendation [5], filed on January 26, 2009, recommends that the Petitioner's motion for leave to proceed *in forma pauperis* be denied. Plaintiff was allowed ten (10) days from the date of service in which to file objections. Service was made on Petitioner by certified mail at SCI Albion, where he is incarcerated. Petitioner has filed no objections to Chief Magistrate Judge Baxter's Report and Recommendation. After de novo review of the petition and documents in the case, together with the Report and Recommendation, the following order is entered:<sup>1</sup>

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<sup>1</sup> The Court notes that, on December 23, 2008, the same day that Petitioner's motion for leave to proceed *in forma pauperis* was filed, Petitioner filed a notice of appeal. It is not clear what Petitioner is attempting to appeal, since no action had been taken by the court as of that date. Regardless, the Petitioner's appeal, which was clearly premature, did not divest this Court of jurisdiction, and so we may appropriately enter the within order. See *Bensalem Tp. v. International Surplus Lines Ins. Co.*, 38 F.3d 1303, 1314 (3d Cir. 1994) (premature notice of appeal does not divest the district court of jurisdiction and district court should therefore continue to exercise its

AND NOW, this 23<sup>rd</sup> day of April, 2009;

IT IS ORDERED that the Petitioner's motion for leave to proceed *in forma pauperis* [1] be, and hereby is, DENIED.

The Report and Recommendation of Chief Magistrate Judge Baxter [5], filed on January 26, 2009, is adopted as the opinion of the Court.

s/ Sean J. McLaughlin  
SEAN J. McLAUGHLIN  
United States District Judge

cm: All parties of record  
Susan Paradise Baxter, Chief U.S. Magistrate Judge

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jurisdiction when faced with a notice of appeal that is clearly premature, so as to avoid delay at the trial court level) (quoting *Mondrow v. Fountain House*, 867 F.2d 798, 800 (3d Cir.1989)).